

Message Text

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ACTION ARA-10

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R 181545Z JUL 75

FM AMEMBASSY QUITO

TO SECSTATE WASHDC 6402

UNCLAS QUITO 5241

E.O. 11652: N/A

TAGS: OEXC AFIN EC

SUBJECT: BINATIONAL COMMISSION SOCIAL SECURITY PAYMENTS

REF: STATE 162305

1. BELOW IS THE ENGLISH TEXT OF AMEMBASSY QUITO'S DIPLOMATIC NOTE #18 OF MARCH 6, 1973. EMBASSY DOES NOT HAVE COPY OF LETTER DATED AUGUST 18, 1967, FROM ECUADOREAN INSTITUTE OF SOCIAL SECURITY TO BINATIONAL COMMISSION; NEITHER DOES THE BINATIONAL COMMISSION, APPARENTLY HAVING LOST OR INADVERTENTLY DESTROYED THE LETTER. IT SHOULD BE NOTED, HOWEVER, THAT THE PORTION OF THE AUGUST 18, 1977 LETTER WHICH WAS QUOTED IN EMBASSY NOTE # 18 AS JUSTIFYING COMMISSION NOT HAVING ENROLLED ITS EMPLOYEES IN IESS HAS BEEN REPUDIATED BY THE IESS ON GROUNDS THAT IT CAME FROM A LOW RANKING OFFICIAL WHO DID NOT HAVE THE AUTHORITY TO SPEAK FOR IESS.

2. IN RELATED DEVELOPMENT, FOREIGN OFFICE HAS DRAWN OUR ATTENTION TO THE PROVISIONS OF AN ECUADOREAN GOVERNMENT DECREE (424 OF 23 MAY 1975) WHICH MAY OFFER A SOLUTION TO THE IMPASSE. DECREE 424 EXONERATES EMPLOYERS WHO STEP FORWARD TO REGISTER PREVIOUSLY UNREGISTERED EMPLOYEES IN IESS FROM PAYMENT OF FINES. WHEN THE DECREE WAS FIRST PUBLISHED, FULBRIGHT COMMISSION (BINATIONAL COMMISSION) TOOK INFORMAL SOUNDINGS WITH IESS TO SEE WHETHER IT COULD BE EXONERATED FROM THE "FINE", HAVING UNCLASSIFIED

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ALREADY ENROLLED ITS EMPLOYEES IN IESS, MADE BACK-PAYMENTS,

INCLUDING INTEREST. IECS'S INFORMAL OPINION (ORALLY, AND AT A LOWER LEVEL) WAS THAT DECREE 424 COULD NOT BE USED TO EXONERATE BINATIONAL COMMISSION FROM "FINE". RECEIPT OF FOREIGN OFFICE NOTING THE PROVISIONS OF DECREE 424, STATING THAT WE ASSUME THEY EXONERATE THE COMMISSION FROM THE "FINE" THE IECS HAS BEEN SEEKING TO IMPOSE, AND ASKING THE FOREIGN OFFICE TO CONFIRM THAT THIS IS THE CASE.

3. IN THE EVENT THAT IT IS NOT, IT WOULD BE HELPFUL TO HAVE AN INDICATION OF WASHINGTON'S VIEWS ON THE LEGITIMACY OF THE BINATIONAL COMMISSION "FINE" (QUITO 4068).

4. FOLLOWING IS TEXT OF EMBASSY NOTE #18 OF MARCH 6, 1973:
"THE EMBASSY OF THE UNITED STATES OF AMERICA PRESENTS ITS COMPLIMENTS TO THE MINISTRY OF FOREIGN RELATIONS AND REFERS TO THE "AGREEMENT BETWEEN THE GOVERNMENT OF ECUADOR AND THE GOVERNMENT OF THE UNITED STATES FOR FINANCING CERTAIN EDUCATIONAL PROGRAMS," ORIGINALLY SIGNED ON OCTOBER 31, 1956, AND AMENDED ON MAY 9, 1961 AND SEPTEMBER 20, 1963.

UNDER THIS AGREEMENT, HUNDREDS OF ECUADOREAN AND AMERICAN CITIZENS HAVE RECEIVED SCHOLARSHIPS FOR STUDY AND TEACHING IN THE UNITED STATES AND ECUADOR. FINANCING OF THE PROGRAM HAS BEEN PROVIDED BY THE GOVERNMENT OF THE UNITED STATES AND HAS TOTALLED ALMOST \$2.5 MILLION DOLLARS. THE PROGRAM IS ADMINISTERED BY THE BINATIONAL COMMISSION FOR EDUCATIONAL EXCHANGE BETWEEN ECUADOR AND THE UNITED STATES, COMMONLY KNOWN AS THE FULBRIGHT COMMISSION.

ON JANUARY 1, 1967 THE COMMISSION VOLUNTARILY ENROLLED IS EMPLOYEES IN THE ECUADOREAN INSTITUTE OF SOCIAL SECURITY (THEN CALLED THE NATIONAL SOCIAL SECURITY FUND).

AT THE TIME THE MANAGEMENT OFFICE OF THE FUND ISSUED THE CERTIFICATE OF ENROLLMENT OF THE COMMISSION EMPLOYEES ON AUGUST 18, 1967, THE FOLLOWING OBSERVATIONS WAS NOTED ON THE DOCUMENT:

"THIS INSTITUTION HAS BEEN IN EXISTENCE FOR EIGHT YEARS, BUT IT HAS NOT CONTRIBUTED BEFORE THIS TIME, BEING A MISSION OF THE UNITED STATES OF

AMERICA WHICH IS EXEMPT FROM CONTRIBUTING TO SOCIAL SECURITY. IT HAS CONTRIBUTED SINCE
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JANUARY OF THIS YEAR IN CONSIDERATION OF THE BENEFIT OF ITS EMPLOYEES."

WITH THIS OBSERVATION MADE BY THE FUND, WHICH IS ALSO THE VIEW OF THE EMBASSY, THE COMMISSION DID NOT GIVE FURTHER THOUGHT TO ANY NEED TO CONTRIBUTE TO THE FUND (AND LATER THE INSTITUTE OF SOCIAL SECURITY) FOR THE PERIOD PRIOR TO 1967, THAT IS OCTOBER 1958 TO DECEMBER 1966.
AS A RESULT OF AN INSPECTION WHICH THE COMMISSION

PERMITTED OF ITS RECORDS OF PAYMENTS TO THE INSTITUTE, MADE IN NOVEMBER 1971, THE INSTITUTE ASSERTED THAT THE COMMISSION WAS LIABLE FOR PAYMENT OF CONTRIBUTIONS AND RESERVE FUND FOR THE PERIOD OCTOBER 1958 TO DECEMBER 1966. IN ADDITION, THE INSTITUTE DECIDED THAT THE COMMISSION SHOULD PAY FINES AND INTERESTS FOR THE SAME PERIOD.

IN VIEW OF THIS DECISION, THE COMMISSION VOLUNTARILY DECIDED TO PAY THE CONTRIBUTIONS AND RESERVE FUND AN AMOUNT TOTALLING 225,854.66 SUCRES. THE COMMISSION ASKED FOR A SPECIAL ALLOCATION OF FUNDS FROM THE DEPARTMENT OF STATE OF THE UNITED STATES AND MADE THIS PAYMENT ON JANUARY 22, 1973. IN A LETTER TRANSMITTING THE PAYMENT (A COPY IS ENCLOSED) FROM THE COMMISSION TO THE GENERAL MANAGER OF THE ECUADOREAN INSTITUTE OF SOCIAL SECURITY, THE COMMISSION ASKED THE INSTITUTE TO RECONSIDER ITS REQUEST THAT IT PAY FINES AND INTERESTS FOR THE 1958-1966 PERIOD, WHICH TOTALLED SOME 229,849 SUCRES, THROUGH AUGUST 1972. THE COMMISSION'S REQUEST WAS DENIED ON FEBRUARY 15, 1973.

THE EMBASSY HAS THE HONOR TO REQUEST THAT THE MINISTRY INFORM THE ECUADOREAN SOCIAL SECURITY INSTITUTE THAT ITS REQUEST THAT THE COMMISSION PAY THESE FINES AND INTERESTS IS IMPROPER IN THAT THE COMMISSION, AS A SPECIAL MISSION OF THE GOVERNMENT OF THE UNITED STATES, IS NOT FORMALLY OBLIGATED TO MAKE SOCIAL SECURITY PAYMENTS AND CANNOT BE COMPELLED TO PAY FINES AND INTERESTS. ARTICLE 1, PARAGRAPH 2 OF THE AGREEMENT CLEARLY STATES THAT THE COMMISSION'S FUNDS "SHALL BE CONSIDERED AS PROPERTY OF A FOREIGN GOVERNMENT." THE SPECIAL STATUS OF THE COMMISSION WAS RECOGNIZED BY THE NATIONAL SOCIAL SECURITY FUND IN 1967 AND ITS SITUATION HAS NOT CHANGED SINCE THAT TIME.

THE MINISTRY MAY ALSO WISH TO TAKE INTO ACCOUNT SEVERAL OTHER IMPORTANT FACTORS:

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1. THE SOCIAL SECURITY PAYMENTS MADE BY THE COMMISSION HAVE BEEN MADE VOLUNTARILY FOR THE BENEFIT OF ITS EMPLOYEES. THE FACT THAT PAYMENT HAS BEEN MADE DOES NOT CONSTITUTE RECOGNITION BY THE COMMISSION OR THE EMBASSY THAT PAYMENT MUST BE MADE.

2. THE COMMISSION IS A NON-PROFIT, EDUCATIONAL PROGRAM OF BENEFIT TO BOTH ECUADOR AND THE UNITED STATES.

3. A GREAT MAJORITY OF THE EMPLOYEES OF THE COMMISSION DURING THE 1958-1966 PERIOD ARE NO LONGER EMPLOYED BY THE COMMISSION.

4. ANY SERIOUS EFFORT TO COMPEL THE COMMISSION TO PAY

THESE FINES AND INTEREST WOULD PROBABLY REQUIRE THE
DEPARTMENT OF STATE TO REVIEW THE ENTIRE FULBRIGHT PROGRAM
IN ECUADOR SINCE SUCH AN EXPENDITURE WOULD SERIOUSLY PREJUDICE
THE NUMBER OF SCHOLARSHIPS AVAILABLE.
THE EMBASSY OF THE UNITED STATES OF AMERICA AVAILS
ITSELF OF THIS OPPORTUNITY TO RENEW TO THE MINISTRY OF
FOREIGN RELATIONS THE ASSURANCES OF ITS HIGHEST AND MOST
DISTINGUISHED CONSIDERATION."
BREWSTER

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Disposition Authority: n/a
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Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
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